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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 196[illegible]

ADKINS TRANSFER COMPANY, INC.,
ADKINS CARGO EXPRESS, INC., and
TENNESSEE CARTAGE COMPANY, INC.,
Appellants,

vs.

HAROLD DORNBOS and BEVERLY DORNBOS,
Individually and d/b/a H. J. DORNBOS
& BRO., a Co-Partnership

and

THE KROGER COMPANY and
ROOKS TRANSFER LINES, INC.,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

JURISDICTIONAL STATEMENT

Appellants, pursuant to United States Supreme Court Rules 13(2) and 15, file this statement of the basis upon which it is contended that the Supreme Court of the United States has, and should exercise, jurisdiction in this case on appeal to review a final decision of the Michigan Supreme Court denying these appellants' application for leave to appeal to that Court.

I. OPINIONS BELOW

The Michigan Supreme Court delivered no written opinion in this case A copy of their order denying appellants' application for leave to appeal is attached (Appendix C, page 30). A copy of their order denying appellants' motion for reconsideration is also attached (Appendix D, page 32). Copies of the Ottawa County Circuit Court (Appendix A, page 21) and of the Michigan Court of Appeals opinions (Appendix B, page 25) denying appellants' motion to quash service of process and dismiss for lack of jurisdiction are also attached to this jurisdictional statement.

II. GROUNDS FOR UNITED STATES SUPREME COURT JURISDICTION

This appeal is from a final order of the Michigan Supreme Court denying appellants' application for leave to appeal from a decision of the Michigan Court of Appeals. The latter affirmed an Ottawa County Circuit Court order which denied appellants' motion to quash service of process and dismiss for lack of jurisdiction. This motion challenged the constitutional validity of the lower court's assumption of jurisdiction over these appellants under Section 715 of the Revised Judicature Act (part of the so-called long-arm statute).

The final orders appealed from were entered on August 20, 1968 and October 30, 1968. Notices of appeal to the United States Supreme Court were filed in the Ottawa County Circuit Court on October 21, 1968 and November 5, 1968.

The Supreme Court of the United States has jurisdiction to review by appeal the order complained of by virtue of the provisions of 28 U.S.C. §1257 (2).

The following decisions sustain the jurisdiction of the United States Supreme Court to review the order on appeal in this case:

Rosenblatt v. American Cyanamid Co., 15 L. ed 2d 39 (1965);

Local 438 Construction Laborers' Union v. Curry, 371 US 542 (1963);

Mercantile Nat'l Bank v. Langdeau, 371 US 555 (1963).

Appellants have asserted in the courts below that they are not subject to jurisdiction in Michigan under the long-arm statute. The constitutional validity of Section 715 as applied to the instant facts has been questioned and challenged. RJA §715 (M.S.A. §27A.715) provides:

> "The existence of any of the following relationships between a corporation or its agent and the State shall constitute a sufficient basis of jurisdiction to enable the courts of record of this State to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgment against such corporation arising out of the act or acts which create any of the following relationships:
>
> 1. The transaction of any business within the State.
> 2. The doing or causing any act to be done, or consequences to occur, in the State resulting in an action for tort.
> 3. The ownership, use, or possession of any real or tangible personal property situated within the State.
> 4. Contracting to insure any person, property, or risks located within this State at the time of contracting.
> 5. Entering into a contract for services to be performed or for materials to be furnished in the State by the defendant."

III. CONSTITUTIONAL QUESTIONS PRESENTED

Jurisdiction over appellants has been sustained by the lower courts under RJA §715 (2). This statutory subsection provides that "the doing or causing any act to be done, or consequences to occur, in this State resulting in

an action for tort. . . ." creates a relationship between the state and the actor sufficient to justify the former's exercise of limited jurisdiction over the latter. In the instant case, the application of this subsection presents two principal questions:

(1) Whether the due process clause of the Fourteenth Amendment to the United States Constitution is violated by the imposition of jurisdiction over interstate motor carriers who have conducted no activities in Michigan and have not invoked the benefits and protection of Michigan laws, where such jurisdiction is based upon the single act of alleged negligent handling, in another State, of a shipment sent by plaintiffs F.O.B. Grand Haven, Michigan, causing direct injury to third persons not parties to the suit and only indirect consequences to plaintiffs domiciled in Michigan.

(2) Whether an undue burden is placed on interstate commerce by requiring a connecting interstate carrier to defend an action in Michigan, where a shipment of goods originated, based on negligent performance of interstate transportation wholly outside of Michigan, having secondary consequences in Michigan, when the shipment involved was put into the steam of commerce by plaintiffs, was transported out of Michigan by another interstate carrier, and was part of plaintiff's pattern of interstate business, when the defendants never owned or maintained property in Michigan, never operated their vehicles on any Michigan highways or had employees in Michigan and were not authorized to operate in Michigan.

IV. STATEMENT OF THE CASE

On June 2, 1965 Harold Dornbos and Beverly Dornbos, Individually and d/b/a H. J. Dornbos & Bro., a Co-partnership (herein referred to as "appellees") filed an action in tort in the Circuit Court for the County of Ottawa, State of Michigan, claiming $500,000.00 in damages from The Kroger Company, Rooks Transfer Lines, Inc., Adkins Transfer Company, Inc., Adkins Cargo Express, Inc. and Tennessee Cartage Company, Inc. Appellees are residents

of Ottawa County, Michigan and were doing business, processing, smoking, packing and selling fish in the City of Grand Haven, Michigan as H. J. Dornbos & Bro., a Co-partnership. Service of process was made on Adkins Transfer Company, Inc., Adkins Cargo Express, Inc. and Tennessee Cartage Company, Inc. (herein referred to as "appellants") in Tennessee.

The cause of action alleged by appellees is based on the negligent contamination and sale of smoked whitefish chubs arising out of the transportation by Rooks Transfer, Adkins Transfer and Tennessee Cartage and sale by the defendant Kroger Company of this product which was put into the stream of commerce by appellees from their plant at Grand Haven, Michigan and shipped to The Kroger Company, F.O.B. Grand Haven, Michigan.

Said smoked whitefish chubs were accepted for shipment and transported from Grand Haven, Michigan to Chicago, Illinois by Rooks Transfer Lines, Inc., a Michigan corporation. They were accepted from Rooks Transfer for shipment and transported from Chicago to Nashville, Tennessee by appellant Adkins Transfer Company, Inc. Local delivery only, to the Kroger Company warehouse in Nashville, was made by appellant Tennessee Cartage, Inc. Sale to the consuming public was made by The Kroger Company. The Kroger Company is an Ohio corporation which carries on a continuous and systematic general retail business throughout the United States.

Said smoked whitefish chubs were at some point and due to some cause, both of which are legally undetermined at the present stage of this proceeding, contaminated with a poisonous substance sometimes referred to as Type E botulism. The contamination of the smoked whitefish chubs caused death or serious injuries to some members of the consuming public to whom they were sold by The Kroger Company in several south central states, with attendant adverse publicity and alleged injuries to appellees.

Appellees' cause of action is in tort for damages resulting to them in Michigan from loss and destruction of business and of business reputation, with attendant mental anguish and resulting deterioration of personal health.

Appellant Adkins Transfer Company, Inc. was a corporation organized under the laws of the State of Indiana but had its principal office and place of business in Nashville, Tennessee. It also operated terminals and offices in Indianapolis, Indiana, Louisville, Kentucky and Chicago, Illinois. Adkins Cargo Express, Inc., successor to Adkins Transfer Company, Inc. is also an Indiana corporation, and has its main truck terminal and principal office in Nashville, Tennessee.

On August 9, 1965 appellants Adkins Transfer Company, Inc., Adkins Cargo Express, Inc. and Tennessee Cartage Company, Inc. filed motions and supporting affidavits to quash service of process and to dismiss the complaint against them. The grounds for this motion were:

(a) The Court lacked jurisdiction over them within the purview of Sections 711 and 715 of the Michigan Revised Judicature Act of 1961.

(b) Said statutory provisions, if they purported to permit service of process to acquire limited personal jurisdiction over appellants in those proceedings, were unconstitutional because they violated the due process of law requirement contained in the Fourteenth Amendment to the Constitution of the United States.

No question was raised concerning the jurisdiction of the Court over the subject matter of the action, the fact of proper service of process or the validity of the service of process insofar as it afforded the appellants reasonable notice and opportunity to be heard.

The affidavits in support of the motion of Adkins Transfer averred that appellant obtained a Certificate of Public Convenience and Necessity from the Interstate Commerce Commission which specifically stated that the only interstate routes over which it could operate were from Nashville via U.S. Highway 41 to Chicago, and from Nashville via U.S. Highway 31 to Louisville, to Sellersburg, Indiana, to Indianapolis and return. The affidavits of Adkins Transfer and Adkins Cargo Express, Inc., both averred that their companies had never owned or maintained property, real or personal, in the State of Michigan, nor had they operated their trucks or other vehicles

on the public roads and highways in the State of Michigan, nor had they had employees in the State of Michigan. They were common carriers of goods operating only in the states of Illinois, Indiana, Kentucky and Tennessee.

Tennessee Cartage Company, Inc. is a corporation organized under the laws of Tennessee. Its general office and principal place of business is in Nashville, Tennessee. Its certificates of convenience and necessity limit its operations to the states of Tennessee and Kentucky.

An affidavit attached to the motion to quash of appellant Tennessee Cartage stated that said company had never owned or maintained property, real or personal, in the State of Michigan, nor had it ever been authorized to and had not in fact ever operated its trucks or other vehicles on the public roads and highways in the State of Michigan, or had employees in the State of Michigan. The affidavit showed that the appellant Tennessee Cartage Company operated a *local cartage business* in Tennessee and was a common carrier of goods in the states of Tennessee and Kentucky.

Oral argument on appellants' motions to quash service and dismiss the complaint was held before Ottawa County Circuit Judge Raymond L. Smith on June 13, 1966. At that time, appellants also challenged the court's assertion of jurisdiction as an undue burden on interstate commerce in violation of Article I, §8, Clause 3 of the United States Constitution.

On September 12, 1966 the trial judge filed his opinion finding that:

(a) M.S.A. §27A.715 authorized limited personal jurisdiction of the Court over the appellants under the factual situation presented;

(b) the very nature of the business of the appellants created the constitutionally necessary "minimum contacts" with states that produce products entering the stream of commerce;

(c) the limited personal jurisdiction of the Court does not result in an undue burden on interstate commerce nor does it offend traditional notions of fair play and substantial justice;

thereby denying appellants' motion to quash service and dismiss the complaint (See Appendix A, page 21)

On September 19, 1966 defendant Kroger Company filed a counter-claim against appellees and a cross-claim against the other defendants in the amount of $4,650,000.00 for its damages, including large sums paid in settlement of numerous claims for injuries to, and the death of various customers of Kroger injured by their consumption of the poisoned fish.

On October 4, 1966 a formal order was filed denying appellants' motion to quash service of process.

On November 9, 1966 the Honorable Raymond L. Smith, Circuit Judge, certified that the order denying appellants' motions to quash service of process involves a controlling and significant question of law on which there is substantial ground for difference of opinion.

Leave to Appeal was granted and Claim of Appeal to the Michigan Court of Appeals was filed by appellants on February 17, 1967. The Michigan Court of Appeals affirmed the judgment denying appellants' motions to quash service of process. (See Appendix B, page 25).

On May 31, 1968 appellants filed in the Michigan Supreme Court an application for leave to appeal from the decision of the Court of Appeals.

On August 20, 1968, the Michigan Supreme Court denied the application for leave to appeal. (See Appendix C, page 30).

On August 23, 1968 appellants filed in the Michigan Supreme Court a motion for reconsideration of this denial

On October 30, 1968, the Michigan Supreme Court denied the motion for reconsideration. (See Appendix D, page 32).

V. SUBSTANTIAL CONSTITUTIONAL QUESTIONS ARE PRESENTED

A. The Judgment of the Michigan Supreme Court is "Final" for Purposes of Review under 28 U.S.C. §1257.

28 U.S.C. §1257 requires that judgments or decrees rendered by the highest court of a state be "final" before they

can be reviewed on appeal to the United States Supreme Court. The final judgment rule is one of administration. The classic justification for the finality requirement is that it precludes premature and piecemeal review, thereby promoting efficient use of the judicial machinery and avoiding unnecessary, costly and dilatory interlocutory appeals. Three recent decisions of this Court have established, however, that "finality" under 28 U.S.C. §1257 is not a mechanical concept requiring a final adjudication of the merits in each case as a prerequisite to appellate consideration. Instead, "finality" must be given a practical meaning in light of the policies sought to be enforced.

In *Local 438 Construction Laborers' Union v. Curry*, 371 US 542 (1963), the Georgia Supreme Court had granted an interlocutory injunction against union picketing alleged by the plaintiff to be in violation of the Georgia right-to-work act. They had rejected the union's contention that the subject matter of the dispute was within the exclusive jurisdiction of the National Labor Relations Board. On appeal to the United States Supreme Court, this judgment was held to be "final" within the meaning of 28 U.S.C. §1257, although the jurisdictional issue would have merged with the merits and been ultimately reviewable in the United States Supreme Court after a trial was held.

In *Mercantile Nat'l Bank v. Langdeau*, 371 US 555 (1963), a complaint was filed in the state courts of Texas against a national bank. The national bank filed a plea of privilege, as provided by the Texas Rules of Civil Procedure, asserting that it was immune from suit in the state courts under the provisions of 12 U.S.C. §94. Their plea was denied. The United States Supreme Court held this denial to be "final" under 28 U.S.C. §1257, and an appeal was allowed. The Texas court ruling on venue could have been considered preliminary, Appeal was allowed however, because the effect of the ruling was to require a "totally unnecessary trial", (15 L ed 2d at 42) and the federal right asserted by the national bank was precisely one not to stand trial in the state court where the complaint had been filed.

Finally, in *Rosenblatt v. American Cyanamid Co.*, 15 L ed 2d 39 (1965), Justice Goldberg, in chambers, concluded that

the denial of a defendant's before trial motion to dismiss a complaint on the ground that the state court's assertion of in personam jurisdiction violated the due process clause of the Fourteenth Amendment to the Constitution of the United States was a "final" judgment for purposes of review under 28 U.S.C. §1257.

These three cases estabilsh that when substantive rights are effectively determined by an interlocutory order or where protracted and costly proceedings are dependent on these orders, postponing review until there has been a final adjudication is not in the interest of either courts or litigants. In each case there had been: (1) a threat of serious erosion of national policy (federal pre-emption of labor disputes, special venue for national banks and the due process right against subjection to excessive state assertions of in personam jurisdiction); and (2) a state judgment on an issue anterior to and separable from the merits, not enmeshed in the factual controversies of the case. These cases recognize that "finality applied inexorably . . . may be self defeating and in conflict with more important policies." Note, *The Requirement of a Final Judgment or Decree for Supreme Court Review of State Courts.* 73 YALE L.J. 515 (1964).

Appellants challenge the imposition of jurisdiction in this case under both the due process clause of the Fourteenth Amendment and the interstate commerce clause of the United States Constitution. These issues were raised at the pre-trial stage in a motion to quash service of process and dismiss the complaint. The Ottawa County Circuit Court, followed by the Michigan Court of Appeals, held that M.S.A. §27A.715 (2) as construed in this case and applied to this defendant was constitutionally applied. Appellants then applied to the Michigan Supreme Court for leave to appeal. Their motion was denied, without prejudice.

The effect of these proceedings will be to require appellants to undergo a long, complex and costly trial of the factual and legal issues presented in this case before they can obtain a definitive decision on the substantial constitutional issues raised by the imposition of jurisdiction by the Michigan courts. In addition to plaintiffs' claims for

damages, the trial will involve over five million dollars in claims and cross-claims and the consideration of numerous separate settlements made by or judgments obtained against cross-claimant The Kroger Company, which is seeking indemnification from appellants as well as damages for injury to its business reputation and loss of profits. The settlements were negotiated with individuals throughout the South Central United States who brought court actions alleging death or injury by the consumption of contaminated fish distributed by the plaintiffs and defendant Kroger.

As in *Rosenblatt*, the jurisdictional issue in this case is separate from and anterior to the merits, so as to be susceptible of independent review. Appellants have a substantial claim that national policies against subjection to excessive assertions of in personam jurisdiction and against the creation of undue burdens against interstate commerce will be violated by the exercise of jurisdiction in this case. These constitutionally protected rights have little substantive meaning if they can be challenged only after a costly and protracted trial of numerous separate and distinct claims in the state court. In a case of this magnitude and complexity, a before-trial review of the jurisdictional issue will promote the efficient and equitable administration of justice, and the traditional restrictions on interlocutory appeals from state courts are out-weighed by considerations of fairness to appellants, appellees and the trial court. If due process and the right to be free from undue burdens on interstate commerce have any meaning as constitutional protections against harassing, burdensome, complex and costly litigation in distant forums, appellants are entitled to a review of the separate jurisdictional issue at this stage of the proceeding.

Because the Michigan Supreme Court denied appellants' application for leave to appeal "without prejudice," it can, presumably, rule on the constitutional challenges to its jurisdiction if the case is again brought before it on an appeal after a trial on the merits. Its present decision, however, finally and unequivocally determines that appellants are to be subjected to a long and costly trial in the courts of Michigan. The thrust of *Rosenblatt, Curry* and

Langdeau cannot be destroyed by a state court judgment rendered "without prejudice". "Without prejudice" is a hollow phrase. If appellants can prevail on their constitutional challenges to the jurisdiction of the Michigan courts only after a long and expensive trial, the constitutional guarantees are crucified. A subsequent right to appeal cannot resurrect those guarantees. The national policies embodied in appellants' constitutional claims are eroded as deeply as if the judgment of the Michigan Supreme Court had been entered with prejudice. Finality has received and should receive a practical construction so the rights guaranteed by the United States Constitution to these appellants will have substantive meaning and effect.

We conclude that the Michigan Supreme Court has determined that the Michigan long-arm statute supports jurisdiction and is not repugnant to the United States Constitution, thus requiring appellants to defend a complex and protracted trial of numerous claims at great time and expense in the courts of the State of Michigan. Their decision, therefore, is subject to review under 28 U.S.C. §1257 (2), pursuant to the principles set forth in *Rosenblatt*, *Curry* and *Langdeau*.

B. The Imposition In Personam Jurisdiction over Appellants Violates the Due Process of Law Requirement of the Fourteenth Amendment to the United States Constitution.

This century has seen a gradual extension of state court power over persons normally found beyond the political boundaries of the state. This development was ushered along by the automobile and the non-resident motorist statutes designed to provide redress for citizens injured by non-residents who voluntarily drove within the forum state. See *Hess v. Pawloski*, 274 US 356 (1927).

International Shoe Co. v. Washington, 326 US 310 (1945), articulated a new standard of reasonableness measured by "minimum contacts" of the defendant with the forum state.

> "due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'." 326 US 316.

The Court indicated the type of minimum contacts that must be examined and found present.

> "But to the extent that a corporation exercises the privilege of conducting *activities within a state*, it enjoys the *benefits and protection of the laws of that state*. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the *activities within the state*, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." (Emphasis added.) 326 US at 319.

It is significant that the Court looked to the benefits, protections and obligations of the non-resident with respect to the laws of the forum state.

McGee v. International Life Ins. Co., 355 US 220 (1957) is another landmark decision in the expansion of jurisdiction within constitutional limitations. Although the defendant in that case had no offices or employees in California, the Court held that California had the power to exercise jurisdiction over the defendant in an action brought by a California resident upon an insurance policy issued by the defendant.

> "It is sufficient for purposes of due process that the suit was based on a *contract* which had *substantial* connection with that State." (Emphasis added) 355 US at 223.

The crucial connections were delivery of the contract in California, mailing the premiums in California, and residence of the insured in California. See 355 US at 223. Additional, compelling reasons for exercising jurisdiction in *McGee* were the facts that the insurance contract was

made in California, the state had enacted special legislation to protect its citizens against abuse by insurance companies not authorized to do business in California, and, traditionally, states have regulated and controlled insurance businesses conducted within their borders.

Hanson v. Denckla, 357 US 235 (1958) held that the state of Florida could not constitutionally exercise jurisdiction over a Delaware trust company in a proceeding to determine the validity of a trust even though the settlor of the trust (1) was a resident of Florida when she died (although not when she created the trust), (2) had exercised a power of appointment while in Florida, and (3) had received income of the trust through checks mailed to her Florida address by the Delaware trustee. *Hanson* reveals definite limitations on state-court jurisdiction asserted by reason of isolated contacts between the forum and the defendant. Chief Justice Warren pointed to a crucial element found in *McGee,* but absent in *Hanson* — a voluntary action performed or consummated *within* the forum.

> "The cause of action in this case is not one that arises out of an *act done* or transaction consummated *in the forum State.* In that respect, it differs from McGee v. International Life Insurance Co. . . ." (Emphasis added.) 357 US 251.
>
> "This suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised *in Florida.*" (Emphasis added.) 357 US 252.
>
> "It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities *within the forum* state, thus *invoking the benefits and protections of its laws.* International Shoe Co. v. Washington, 326 US 310, 319." (Emphasis added.) 357 US at 253.

Thus, from *International Shoe Co. v. Washington, supra,* to *Hanson v. Denckla, supra,* this Court has made it clear that jurisdiction over non-residents is constitutionally

supportable only when a quid pro quo was *sought by the non-resident* in the form of *benefits and protections* of the forum's laws. These principles were most recently reaffirmed and restated by Justice Goldberg, in chambers, in *Rosenblatt v. American Cyanamid Co.*, 15 L. ed 2d 39 (1965).

The Ottawa County Circuit Court and the Michigan Court of Appeals rejected appellants' due process challenge to their jurisdiction by improperly applying the "minimum contacts" standard enunciated in *International Shoe Co. v. Washington*, supra. Appellants Adkins' only connection with the State of Michigan was through the acceptance of Michigan products in Chicago, Illinois, from another common carrier. Appellant Tennessee Cartage's only connection was its acceptance and delivery of the interstate shipment of fish locally, in Nashville. This tenuous relationship with the State of Michigan led the lower courts to conclude that the nature of appellants' business is such that "they are required to carry goods solicited by *others* with whom they have a business relationship and *who have a direct relationship* with the forum state". (Emphasis added.) The lower courts concluded that this single, indirect contact by other shippers, satisfied the constitutional minimum.

The product was introduced into the stream of commerce in Michigan by appellees, H. J. Dornbos & Bro., plaintiffs below, from their plant at Grand Haven, Michigan. Appellants did not carry the fish into Michigan or participate in any shipment of a product into Michigan.

Further, Dornbos shipped to appellee The Kroger Company, F.O.B. Grand Haven, Michigan. Title passed to Kroger by the action of Dornbos, at Grand Haven, and Appellants therefore were transporting Kroger's fish at Kroger's expense, making these appellants' connection with Dornbos, plaintiffs herein, even more tenuous.

Appellants did not seek, nor could they have availed themselves of, the protection of the laws of the State of Michigan. They never set foot in Michigan, performed

services in Michigan or sent agents or employees into Michigan.

Whatever commercial opportunities were enjoyed by appellants were conferred by the Interstate Commerce Commission, not by the State of Michigan, who could not and did not bestow such benefits.

Appellants engaged in absolutely no activities within the State of Michigan and they had no connection with the State which could be said to invoke the "benefits and protections of its laws". *Hanson v. Denckla,* supra, at 253. Neither lower court decision cited *Hanson v. Denckla.* Their failure to consider the impact of this decision was erroneous. They chose to rely upon *Gray v. American Radiator & Standard Sanitary Corp.,* 176 NE 2d 761 (Ill. 1961), a products liability case in which the defendant voluntarily placed its product in the stream of commerce which eventually carried the product into the state of Illinois. By utilizing the reasonable, volitional presumption of foreseeability, the court could conclude that the defendant purposefully availed itself of the benefits and protections of the laws of Illinois. In a products liability case, the defendant is typically a commercial enterprise which initiated the disputed transaction and the plaintiff is an individual consumer, thus presenting equities far different from those in the present case. In the present case, *plaintiffs-appellees* Dornbos were the ones who sent Kroger's fish to appellants Adkins in Chicago, Illinois for delivery to Kroger in Tennessee. Plaintiffs-appellees *themselves* instigated the chain of events which neither contemplated nor required any activity by appellants in Michigan. Moreover, appellant Tennessee Cartage merely made the *local* delivery to Kroger, in Nashville, of Kroger's fish.

In recognition of the complexities presented in this case, the Honorable Raymond L. Smith, Circuit Judge, whose opinion was the basis for the later opinion of the Michigan Court of Appeals, certified that his order denying appellants' motions to quash service of process involved a controlling and significant question of law on which there is substantial ground for difference of opinion.

Hanson v. Denckla, supra, with the exception of *Rosenblatt v. American Cyanamid Co.,* supra, is the last United States Supreme Court decision delineating the outposts and boundaries of jurisdiction by state courts. There is hopeless confusion as to whether *Hanson* asserts general guidelines to jurisdiction or should be limited to its facts. *E.g., Trippe Mfg. Co. v. Spencer Gifts, Inc.,* 270 F. 2d 821, 822 (7th Cir 1959); *Hearne v. Dow-Badische Chemical Co.,* 224 F. Supp 90 (S.D. Tex. 1963); *Roy v. North American Newspaper Alliance, Inc.,* 205 A. 2d 844 (N.H. 1964). Compare LeFlar, *Conflict of Laws,* 34 N.Y. U.L. REV. 20, 33 (1959) with Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois,* 1963 Ill. L. FORUM 533 and Carrington and Martin, *Substantive Interests and the Jurisdiction of State Courts,* 66 MICH L REV. 227 (1968). See also Note, *Due Process and Foreign Corporations — The Minnesota Single Act Statute,* 50 MINN L. REV. 946 (1966); Note, *Jurisdiction: Construction of "Tortious Act" in New York's Long-Arm Statute,* 66 COLUM. L. REV. 199 (1966).

If limited personal jurisdiction is constitutionally permissible in this situation, a significant step beyond *Hanson v. Denckla* has been taken. This may or may not be a legitimate undertaking. These appellants assert that it is not. Before any such step is permitted, however, this Court should consider and pass upon this very substantial question affecting all forms of transportation engaged in interstate commerce and, in the process, eliminate the confusion surrounding the interpretation of its prior decisions.

C. The Imposition of In Personam Jurisdiction over Appellants Constitutes an Undue Burden on Interstate Commerce in Violation of Article I, Sec. 8, Clause 3 of the United States Constitution.

Appellants are connecting carriers engaged exclusively in interstate commerce within a geographic area carefully restricted and defined by Certificates of Public Convenience and Necessity issued by the Interstate Commerce Com-

mission. Their statutory duty is to accept and transport goods over specified routes when goods are presented to them for such service. Their duty exists without regard to the origin or the destination of the products. Further, this is an obligation imposed by *federal* law. 49 U.S.C. §301 et. seq. It is not a right, duty or privilege emanating from the law of any state. It most certainly is not a privilege that can be granted or withheld by Michigan law, or that traditionally has been regulated by the state.

The lower court decisions would require a connecting carrier who has transported goods for a portion of their interstate travel to defend an action brought in the forum of the shipper's residence, however distant, if alleged negligent performance of the transportation is said to adversely affect the shipper. Such a requirement exposes a carrier to potential harassment and frivolous claims in distant forums. If the requirement stands, the interstate carrier cannot know the jurisdictions in which it must be prepared to defend its conduct. Despite the fact that the *shipper* has voluntarily decided to expose his product to interstate markets with full knowledge of its itinerary it is the *carrier* that is subjected to litigation at the *shipper's* convenience. A connecting or delivering carrier could be required to defend an action in a forum which would apply law other than its own, and to which witnesses could not be compelled to travel. It is realistic to expect that interstate service would be disrupted by the absence of key personnel involved in such litigation. This is a commercially unreasonable and intolerable burden on interstate commerce.

Davis v. Farmers' Co-op Equity Co., 262 US 312 (1923) is an historic decision where assumption of jurisdiction was held to be an unreasonable burden on interstate commerce. In *Davis*, the Court struck down a statute requiring a foreign corporation to submit to jurisdiction in Minnesota on a cause of action arising wholly outside the state and brought by a non-resident plaintiff even though the corporation maintained an agent in Minnesota who

solicited interstate business. *Davis* clearly holds that even solicitation of business within a jurisdiction by a business engaged exclusively in interstate commerce cannot alone be a basis for state court jurisdiction without violating the interstate commerce clause. While the years since the *Davis* decision have seen expanded concepts of jurisdiction develop under the due process clause, *Davis* has not been overruled, and recent decisions have demonstrated its current vitality. *E.g., Hershel v. Pennsylvania R.R. Co.*, 334 Mich. 148, 54 NW 2d 286 (1952); *White v. Southern Pacific Co.*, 386 SW 2d 6 (Mo. 1965); *Glaser v. Pennsylvania R.R.*, 82 N.J. Super 16, 196A.2d 539 (1963); *Erlanger Mills v. Cohoes Fibre Mills*, 239 F.2d 502 (4th Cir. 1956).

Because appellants are engaged exclusively in interstate commerce, attenuated contacts such as exist in this case are insufficient to sustain personal jurisdiction. *Cf. Curtis Pub. Co. v. Butts*, 338 US 130, 153 (1967); *Buckley v. New York Times Co.*, 338 F.2d 470 (5th Cir. 1964); *New York Times Co. v. Connor*, 365 F.2d 567 (5th Cir. 1966) (Presence of first amendment considerations required greater showing of contact to satisfy the due process clause than is necessary in asserting jurisdiction over other types of tortious activity). Whereas the due process clause is concerned primarily with fairness to the individual and protection against unreasonable interference in a specific situation, the commerce clause is designed to facilitate and assist the development and functioning of transportation and business activity generally in a federal system. The public at large, as well as all those engaged exclusively in interstate commerce, have a considerable interest in determining the constitutional validity of jurisdiction in this case, with its resulting expense, inconvenience and interruption of service to the public. The threat to appellants and to other interstate carriers similarly situated poses a unique and substantial question which deserves a review by the United States Supreme Court.

VI. CONCLUSION

Wherefore, it is respectfully submitted that this Court has jurisdiction of this appeal under Section 1257 (2), Title 28, United States Code.

Respectfully submitted,

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